

May 4, 1949

**LAW LIBRARY**  
**ARIZONA ATTORNEY GENERAL**

A. M. Tuthill, Major General  
NG. AZ., The Adjutant General  
State of Arizona  
747 W. Van Buren Street  
Phoenix, Arizona

Dear General Tuthill:

We have your request of May 2, 1949, for our opinion as to the legality of the National Guard making sales of surplus property at Fort Huachuca direct to departments of the State. A portion of your letter reads as follows:

"In view of the portion of this Section that is quoted, your opinion is requested as to whether or not the National Guard of Arizona can withdraw items requested by other Departments of the State and sell them directly to the Department submitting a request rather than have them compete against the general public and further, can this Office of the Adjutant General, State of Arizona, notify the Industrial School at Fort Grant, the State Prison at Florence, and the State Game and Fish Commission that they are privileged to purchase outright, items of pipe and water tanks."

You refer to a portion of Section 4-318, Supplement to A.C.A. 1939, which deals with the condemnation and sale of useless personal property by departments and agencies of the State. This section concludes with the following statement:

"Except as herein provided no personal property of the state, its departments or agencies, shall be sold, exchanged or disposed of; provided, this act shall not apply to property sold or exchanged between the various institutions, departments or agencies of the state, as otherwise provided for by law."

It is to be noted that the Act accepting Fort Huachuca (Chapter 67, Regular Session, 19th Legislature) in Section 2 thereof, provided in part with reference to sales of surplus property at the Fort:

"Provided, however, that any such sale, lease or disposal of the property shall be done in the same manner relative to advertising and public auction as provided in Sections 4-318 and 4-319 Arizona Code of 1939, as amended \* \* \*"

A. M. Tuthill, Major General  
The Adjutant General

Page Two  
May 5, 1949

You will observe that while the Act accepting Fort Huachuca sets up the procedure governing the sale of surplus property at the Fort by referring to Sections 4-318 and 4-319, these sections only provide for one type of sale, that is by public auction, to the highest bidder.

It is true that the last paragraph of Section 4-318, quoted above, states in substance that the section shall not apply to sales between the various departments of the State as otherwise provided by law. Undoubtedly at the time this law was enacted thought was given to some additional law which would provide for a sale or exchange of property between state departments, however, this additional law has not to this date been enacted.

We are therefore confined to the provisions of Section 4-318 until some additional legislation is passed by the Legislature, even to sales or transfers of personal property between departments of the State.

It is therefore our opinion that items included in the notice of sale may not be sold directly to any of the State Departments mentioned in your letter, but that they must appear at the sale and bid for the items which they wish to obtain.

It is also our opinion that the sale should be made in such manner as will bring the highest price, and if selling in parcels will produce the highest price, this manner of sale should be followed.

Trusting this answers your inquiry, we are

Yours very truly,

FRED O. WILSON  
Attorney General

PERRY M. LING  
Chief Assistant  
Attorney General

PML:mg